

The Regulation and Implementation of Corporate Social Responsibility by Foreign Direct Investment in Block Pase Upstream Oil and Gas Sector, East Aceh Regency

Pengaturan dan Pelaksanaan Corporate Social Responsibility Dalam Investasi Asing Sektor Hulu Minyak dan Gas Bumi Blok Pase Kabupaten Aceh Timur

Hidayah Balqis

Students of Law Faculty of Syiah Kuala University
Jl. Putroe Phang No.1 Darussalam, Banda Aceh 23111
e-mail: hidayahbalqis42@gmail.com

Nurdin MH

Law Faculty of Syiah Kuala University
Jl. Putroe Phang No.1 Darussalam, Banda Aceh 23111
e-mail: nurdinhusin@unsyiah.ac.id

ABSTRACT

This research aims to explain how the regulation of CSR and what factors support and hinder the implementation of CSR in foreign direct investment in the upstream oil and gas sector in the Pase Block, East Aceh. The writing of this thesis uses a normative juridical method. The result of the study shows that the implementation of CSR in the Pase Block was not in accordance with UU No. 11 Tahun 2006 tentang Pemerintahan Aceh, Qanun Aceh No. 5 Tahun 2018 tentang Penanaman Modal, Qanun Kabupaten Aceh Timur No. 12 Tahun 2016 tentang TJSLP, Peraturan Gubernur No. 65 tahun 2016 tentang Pedoman Pelaksanaan TJSLP and ISO 26000, as well as Production Sharing Contract between parties. The company has not implement CSR in accordance with the laws and regulations due to lack of commitment of TPI to implement CSR. As a result, the CSR has not had a positive impact on the economic growth of community and the environment around the company.

Keywords: Regulation of CSR, Oil and Gas, Foreign Direct Investment

ABSTRAK

Penelitian ini bertujuan untuk menjelaskan bagaimana pengaturan CSR dan faktor apa saja yang mendukung serta menghambat pelaksanaan CSR dalam investasi asing di sektor hulu minyak dan gas bumi Blok Pase Kabupaten Aceh Timur. Penelitian ini menggunakan metode penelitian yuridis normatif. Dari hasil penelitian ditemukan bahwa pelaksanaan CSR oleh investasi asing di sektor hulu minyak dan gas bumi di Blok Pase tidak sesuai dengan UU No. 11 Tahun 2006 tentang Pemerintahan Aceh, Qanun Aceh No. 5 Tahun 2018 tentang Penanaman Modal, Qanun Kabupaten Aceh Timur No. 12 Tahun 2016 tentang TJSLP, Peraturan Gubernur No. 65 tahun 2016 tentang Pedoman Pelaksanaan TJSLP dan ISO 26000 serta Kontrak Bagi Hasil antara Para Pihak. Perusahaan belum melaksanakan CSR sesuai dengan peraturan perundang-undangan dikarenakan lemahnya komitmen pihak perusahaan untuk mewujudkan CSR, sehingga belum memberikan dampak positif terhadap pertumbuhan ekonomi masyarakat dan lingkungan yang berada di lingkaran perusahaan.

Kata Kunci: Pengaturan CSR, Minyak dan Gas Bumi, Investasi Asing

INTRODUCTION

CSR is a form of social responsibility of a company that affects individuals, communities and the environments where that company operates.¹

*The World Business Council for Sustainable Development (WBCSD) define CSR or Company Social Responsibility as such “continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.”*²

The regulation of CSR by the Implementation of Foreign Investment (PMA) in the oil stream and natural gas sector are regulated by the decree of 2007 Constitution No. 25 regarding Investment, 2007 Constitution No. 40 regarding Limited Company. In Aceh, the regulation of foreign investment (PMA) CSR in the oil stream and natural gas sector are regulated by the 2006 Constitution No. 11 regarding the Aceh Government, 2015 Governemnt Constution No. 23 regarding the Join Management of Natural Oil and Gas Resources in Aceh, 2018 *Qanun* No. 5 regarding Investment, 2016 East Aceh Disctrics *Qanun* regarding Company Sosial and Environmental Responsibility as well as Production Sharing Contract (PSC).

The responsibility regulation of CSR implementation were meant to give clear limitation regarding CSR as well as its perpetrator, guarantee the coordinated function in the implemenatation of CSR based on the Constitutions, reduce the negative effects of company and optimize the positive effects of the company, protecting the natural resources and the environmental fuction in Aceh, and being the basis for Acehnese Government to appreciate the company that implements the well and sustainable CSR program.

This phenomena could be observed from the existense of oil and natural gas administrator, especially the foreign investment company Triangle Pase Inc. that have yet to implement CSR well. This causes the community around the company to bear less of the positive effects from the company and the environments around the company sufferes and abandoned by the natural oil and gas company.

Based on the description above, the problem to be further discussed in this research are as follows:

1. How did the regulation of CSR in a foreign investment in the oil stream and natural gas sector in Blok Pas of East Aceh Distrcit.

¹ Lela Nurlalela Wati, *Model Corporate Social Responsibility (CSR)*, Myria Publisher, Ponorogo, 2019. hlm. 12.

² Yusuf Wibisono, *Membedah Konsep dan Aplikasi CSR*, Fascho Publishing, Gresik, 2007, hlm. 7.

2. What factors that supports and hinders the regulation of CSR in a foreign investment in the oil stream and natural gas sector in Blok Pas of East Aceh District.

RESEARCH METHOD

1. Research Method

This is a normative juridical research. Normative juridical law research is a method of archival law research by researching library archives or secondary data.³ This research is also combined with empirical research.

2. Data Collection Technique

This research collects the data using the following method:

1. Library research, which is a research done through variety of literatures, such as books, constitutions, journals, previous research as well as experts forums regarding this research which would be used as the primary legal material in this research.
 2. Field research, a list of questionnaires made based on the formulated problems of this research and was given to respondents related to the regulation of CSR of oil stream and natural gas foreign investment in Blos Pase of East Aceh District.
- ### 3. Research Data Sources
- a. Primary Legal Material,, this research utilize the following primary legal material:
 1. 1992 Rio Declaration on Environment and Development;
 2. 2007 Constitutions No. 40 regarding Limited Company;
 3. 2007 Constintutions No. 25 regarding Investment;
 4. 2006 Constitutions No. 11 regarding Acehnesse Government;
 5. 2012 Government Constitutions No. 47 regarding Social and Environmental Responsibility of Limited Company.
 - b. Secondary legal material, whichs is legal material that explains the primary legal material. The secondary materials of this research are research reports, scientific writings, journals, papers, and domestic and foreign articles regarding the regulation and implementation of CSR by a company.
 - c. Tertiary legal material, which is legal material used further explain the primary and secondary legal material. The tertiary legal material includes encyclopedias, law dictionaries, black's dictionary, Great Dictionary of Indonesian Language and anything else that are related to the regulation and implementation of CSR.

4. Data Analysis

The data were analyzed based on the acquired legal materials by a normative qualitative methods, which is by analyzing the legal material consisting of national and international law instrument by understanding, studying and compiled systematically which would then be outlined using constitutional regulation, law theory and doctrine.

RESEARCH RESULT AND DISCUSSION

1) Corporate Social Responsibility Regulation on Foreign Investment of Oil Stream and Natural Gas Sector in Blok Pasa of East Aceh District.

The oil stream and natural gas sector of Blok Pasa in East Aceh District were managed by a foreign investment of Triangle Pasa Inc, which is a subsidiary of Triangle Global Energy, an Australian company based on Perth, Australia.

As part of the Province of Aceh which has the privilege to manage its resources, the management of natural oil and gas in Blok Pasa of East Aceh District were done based on national and international regulation as well as Aceh region regulations.

CSR responsibility by Foreign Investment (PMA) in Aceh were specially regulated in the 2018 Aceh *Qanun* No. 5 regarding Investment in the 10th chapter stated that an investment requires a corporate social responsibility and further read on the 11th chapter that the investor were responsible to provide community development funds regulated based on the constitutions.

CSR were also regulated in 2015 Government Regulation No. 23 regarding Joint Management of Natural Oil and Gas Resources in Aceh in the 43rd Chapters verse (2) that stated that Joint Work Contracts of oil and gas administration must follows certain rules as followed: a) state revenue; b) Work Area and its return; c) obligation to disburse funds; d) ownership transversal of production results of oil and natural gas; e) timeframe and conditions of contract extensions; f) dispute resolution; g) obligation to provide natural oil and/or natural gas for the Nation needs; h) conclusion of contract; i) post-exploration and exploitation obligation; j) workplace safety; k) environmental management; l) transferal of rights and obligations; m) required reports; n) field expansions plans; o) prioritizing domestic goods and services uses; p) community development; and q) prioritizing Indonesian workforce.

The 43rd chapter verse (2) show that the implementation of CSR must be written in the joint venture contract which would then be implemented as an obligation for the party in the joint venture contract of the oil and natural gas management.

The management of oil and natural gas in Blok Pasa of East Aceh District were done through a Production Sharing Contract (PSC), which were agreed by Triangle Pasa Inc, that stated a series of rights and obligations like, operational action funds use, workforce, stock sharing between Acehese Developmental Regional Government (PDPA) and Triangle Pasa, Inc (TPI), community developments funds allocation, a representative of Acehese government in a branch company managing Pasa workforce, obligations to provide Acehese government through the production of oil and gas in the Pasa work force, dispute resolutions and other PSC substances.

A joint venture contract for oil stream and natural gas business in Indonesia were regulated and supervised by Specialized Work Unit of Oil Stream and Natural Gas Business (*SKK Migas*). However, the regulation and supervision in Aceh were done by the Acehese Oil and Gas Management Agency (*BPMA*) which is a Special Acehese Government Agency.

The formation of BPMA were regulated by the 2015 Government Constitution No. 23 regarding Joint Management of Natural Oil and Gas Resources in Aceh. One of the functions of BPMA were stated in chapter 14 subsidiary (f) of the 2015 Government Constitution No. 23, which was to give work plan and funding approval for Work Force / Permanent Business Entity. In order to perform that functions, BPMA must considers these regarding factors: a) long-term planning; b) action facility achievements; c) back-up development and production efforts of oil and natural gas; d) technicalities of action and equity of funds of every planned action; e) efficiency efforts; f) approved development plan; g) time constraint and expiration of the Cooperatin Contract; h) workforce safety and environmental development; i) the use and development of the work force and industrial relation guidance; and j) development of the surrounding community and environment.

With those considerations, the implementation of CSR by an oil stream and natural gas company in Aceh were regulated directly by the BPMA.

The implementation of CSR by an oil stream and natural gas company in Aceh were done officially based on the decree of the 2016 Governor Regulation No. 64 regarding the Directive of Company Social and Environmental Responsibility in Aceh. As stated on chapter 9 verse (1), that a business company in / related to natural resources needed to implement company social and environmental responsibility (CSR). Therefore, Triangle Pasa, Inc. as a foreign investor in managing gas in Blok Pasa of East Aceh District is

obligated to prepare a CSR company fund and implement CSR as stated and regulated by the constitution.³

The District of East Aceh also has an individual constitution regarding the company social responsibility (CSR) which is the 2016 East Aceh District *Qanun* No. 12 regarding the Company Social and Environmental Responsibility. This *Qanun* regulates all of the oil and natural gas management company in Blok Pasa. The formation of this *Qanun* is to give assurance and legal guarantee of the implementation of social and environmental responsibility programs in the District of East Aceh, giving direction to all companies and all related parties in the District of East Aceh to fulfilled an international standard and optimizing the role of the business in improving the development of the district.

A company social and environmental programs in the District of East Aceh consists of several programs; 1) social and environmental development programs, programs that aim to preserve environmental function and directly helps the community around the area. Environmental development programs include physical environmental development, social environmental development, and small business and union development, 2) partnership between small businesses and the union, a program aiming to improve and develop independence community businesses in the targeted area. A partnership program between small businesses and the union consists of, research and assessment of needs; improvement of community social economy institution; business training, monetary governance and function management training, business development training, as well as increasing product quality, design, packaging, marketing, networking and company classification improvement; improving management and productivity quality; and improving innovation growth and creativity, 3) direct program for the community such as, grants appropriate to quality of the company; awards like scholarships for the community with appropriate academical qualification but were challenged economically; subsidy in the form of community developments projects funding, implementation of public facilities or small scale financial aid, social aid in form of money, goods or services for orphanage and nursing houses, disaster victims and socially challenged welfare community, social services, such as educational service, sports and social worker compensation; and social protections like giving work opportunities for national/regional athlete and disabled member of the community.

Triangle Pasa, Inc. (TPI), as a oil and natural gas management company in Blok Pasa of East Aceh District, implements the social and environmental responsibility programs

³ Hasil wawancara dengan Afrilian Perdana, Staf Bidang Bantuan Hukum BPMA di Banda Aceh, tanggal 10 Januari 2022.

according to the regulation set by the Acehnesse government. The impenetation of CSR/TJSLP by TPI were done based on the TPI Work Program and Budget (WP&B) that were approved by BPMA. However there are certain areas in the implementation of CSR TPI which have their own constitution.⁴

In the implementation of CSR, Triangle Pase, Inc (TPI) did not have their own CSR forum, the implementation of CSR by TPI was done through a forum formed by the Acehnesse Government. For as long as TPI operates, they have implements some CSR programs as follows: 1) road construction from Blang Seunong village to Pantee Labu village (January 2017), 2) participating in the repainting of Pantee Bidari Districts Office (July 2017), 3) aiding floods victims in Pantee Bidari districts (December 2017), 4) Participating in the opening of Lubok Pusaka Village Islamic Center (March 2018), 6) Giving donations with the value of 190 (one hundred and ninety) of medical equipment to two hospitals in North Aceh and East Aceh (December 2020).⁵

2) Supporting and Hindering Factors of CSR Implementation for Foreign Investment in Oil Stream and Natural Gas in Blok PASE of East Aceh District

A supporting factor of CSR implementation for foreign investor in the sector of oil stream and natural gas in Blok PASE of East Aceh District is the commitment of CSR funds allocation from the acting company, in this case, Triangle Pase, Inc.

The CSR fund guarantee of Triangle Pase, Inc could be seen in the joint venture contract of oil and natural gas management through the allocation of community development funds in the company Work Program and Budget (WP&B) supervised by BPMA.⁶

CSR could not be implemented based on the availability of the fund alone; there are several factors that came from inside and outside of the company.

In allocating the CSR funds, Triangle Pase, Inc. faces a couple of hindering factors like the faraway location of settlements, some settlements were located in hills causing difficulties of access for the company where the road becomes extremely slippery when raining and becomes extremely dusty when it's hot, as well as the Covid-19 pandemic and the village inaccuracy (unclear) administrative and transparency.⁷

⁴ Hasil wawancara dengan Razali Jakfar Public Relation Manager Triangle Pase Inc, tanggal 16 Februari 2022.

⁵ Triangle Pase Inc Press Release, <https://www.trianglenergy-indo.com/en/>, diakses pada tanggal 12 Februari 2022.

⁶ Hasil wawancara dengan Razali Jakfar, Public Relation Manager Triangle Pase Inc, tanggal 16 Februari 2022.

⁷ *Ibid.*

Those hindering factors cause the implementation of CSR by Triangle Paise, Inc. to not be maximal. Therefore, cooperation is needed from the company and the local government from the districts to the local village figures.

Those hindering factors could be handled if Triangle Paise, Inc have a separate forum that manage the company CSR funds as stated on the 2016 East Aceh Districts *Qanun* No. 12 regarding Company Social and Environmental Responsibility consisting of company elements and important community element so that the implementation of CSR could be done to its goal of improving the economy and welfare as well as protecting the surrounding environments. Other than that, the company must have a strong commitment to allocate the CSR funds and implements it consistently with the surrounding community aspiration.

Triangle Paise, Inc. also have faced difficulties regarding CSR with the PDPA (Acehnese Local Company Development). Whereas, PDPA sue Triangle Paise, Inc for a breach of the Blok Paise management Production Sharing Contract (PSC). This happened because Triangle Paise, Inc did not execute their obligations of allocating the CSR funds as stated on the Joint Venture Agreement (JVA) between the PDPA and Triangle Paise, Inc. which resulted in its branch company the Aceh Paise Global Engery (APGE). The JVA could be separated from the Production Sharing Contract (PSC).

PDPA accuses that Triangle Paise, Inc. did not fulfilled their obligations of allocating the CSR funds for community development in the amount of US\$1.1 million dollars and funds for road constructions in the amount of US\$4.8 million dollars.⁹ The CSR funds allocations for community development should have been made apparent in 2010 based on the Triangle Paise, Inc. CSR, causing PDPA to suffers from material value of US\$ 781,467 (seven hundred eighty one thousand and four hundred sixty seven US dollar).

Therefore, PDPA sues Triangle Paise, Inc via the Indonesian National Arbitration Agency (BANI) for them to fulfill their obligations in accordance to the Joint Venture Agreement (JVA) validated on the 23 of April 2013 and pay the amount of loss of the materials to the PDPA. Triangle Paise, Inc. responded by stating that the obligations to allocate funds for community development and road constructions were the obligations of APGE and not Triangle Paise, Inc. However, the APGE never execute the operations due to APGE were not registered in Indonesia therefore were not part of a valid legal body and can not operate because they don't have a joint venture contract with the SKK Migas.

Following the constitutions, the CSR funds allocations was an obligation for an operating company in line with the company yearly work plan. Making it impossible for

APGE to allocate CSR funds as obligated in the Blok Pasa management joint venture agreement (JVA).

The Indonesian National Arbitration Agency (BANI), as a dispute resolution agency, declared that Triangle Pasa, Inc. to be innocent and PDPA must pay arbitration funds of Rp. 490,303,550 (four hundred ninety million three hundred and three thousand five hundred and fifty rupiah) or an equivalent of AU\$47,380 (forty seven thousand and three hundred and eighty Australian dollar).¹⁰

This would't have happened if the PDPA directive communicates intensively with Triangle Pasa, Inc and other related services in realizing the JVA and the PSC in managing Blok Pasa, BPMA as the supervising agency for the joint venture agreement of the oil and natural management in Aceh should be more strict and diligent in supervising the joint venture agreement of Blok Pasa management to realized the Blok Pasa management as stated in the joint venture agreement (JVA) or in the production sharing contract (PSC).

CONCLUSION

The regulation of Corporate Social Responsibility in oil and natural gas mangament in Blok Pasa by foreign investor in East Aceh District were regulated in the 2006 Constitutions No. 11 regarding the Acehese Government, 2007 Constitutions No. 25 regarding Investment, 2007 Constitutions No. 40 regarding Limited Company, 2015 Government Constitutions No. 23 regarding Joint Management of Natural Oil and Gas Resources in Aceh, and 2018 *Qanun* No. 5 regarding Investment, 2016 East Aceh District *Qanun* No. 12 regarding Company Social and Environmental Responsibility as well as Production Sharing Contract (PSC). Those constitutions obligate foreign investor that manages oil and natural gas to regulate and implement CSR. However, Triangle Pasa, Inc. have yet to fully implement them as obligated by those constitutions. This forces the PDPA to take up legal action against Triangle Pasa, Inc. to the BANI who where then rejected all of PDPA demands.

In the process of CSR implementation in East Aceh District, the incompetence of Acehese Government, BPMA, East Aceh District Government and related services that supervise it was shown. The devoid of strong commitment from the company to allocate the CSR and implements it to the surrounding community programs.

The Acehese Government should make specialized regulations regarding the implementation of CSR for foreign investor (PMA) in the sector of oil stream and natural gas as detailed and assertively as possible while still regarding the ISO 26000 standee for the

improvement of economy and continued development of the surrounding community. PDPA were also advised to undertake legal actions to the BANI ruling so that the CSE funds could be allocated as it should.

Regarding the hindering factors that causing the hindrance to the CSR funds allocations, the Acehese government, BPMA, East Aceh District government and related services should work cooperatively in supervising the implementation of CSR to make sure the CSR funds were allocated in accordance to the needs of the surrounding community

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